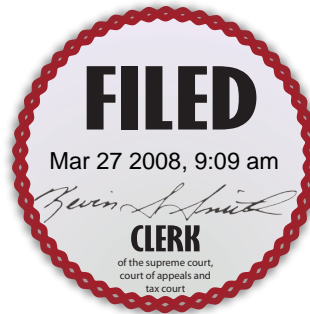


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

SARAH L. NAGY
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

KARL M. SCHARNBERG
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JOSHUA IRVEN JONES,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 40A01-0708-CR-371

APPEAL FROM THE JENNINGS CIRCUIT COURT
The Honorable Jon W. Webster, Judge
Cause No. 40C01-0602-FA-028

March 27, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Joshua Irven Jones appeals the sentence imposed following his conviction for Residential Burglary Resulting in Serious Bodily Injury,¹ a class B felony. Specifically, Jones argues that the twenty-year sentence with three years suspended is inappropriate when considering the nature of the offense and his character. Jones claims that his sentence should be reduced in light of his “unique character” and because the attack on the victim may have been nothing more than a “methamphetamine-induced act.” Appellant’s Br. p. 3. Finding no error, we affirm the judgment of the trial court.

FACTS

On January 11, 2006, Jones, who was nineteen, approached seventy-five-year-old Martha Cheever’s residence in rural Jennings County. When Cheever answered the door, Jones told her that his vehicle had broken down and he needed to call a tow truck. As a result, Cheever retrieved a telephone book and attempted to locate a number for Jones. Jones then forced his way into Cheever’s residence and attacked her.

Jones punched Cheever in the face and shoved her to the floor. Cheever hit her shoulder on a coffee table, fracturing her right scapula, clavicle, and several ribs. Cheever also suffered a collapsed lung in the incident, and her top denture plate had been broken.

After the attack, Jones fled the residence and Cheever telephoned a neighbor, who called an ambulance. Cheever spent twenty-three days in the hospital recovering from

¹ Ind. Code § 35-43-2-1.

her injuries, and she underwent physical therapy for approximately one month. Cheever was placed on a breathing machine for a week, and she had no use of her right arm. Five months after the attack, Cheever was still doing exercises in an effort to gain full recovery of her arm. At some point, Cheever became “too scared” to live by herself, and she eventually moved out of the home she had lived in for forty-one years and relocated to St. Louis, where she could be close to her family. Tr. p. 9-10.

On February 16, 2006, Jones was arrested and charged with the above offense, aggravated battery, a class B felony, and battery resulting in serious bodily injury, a class C felony. Thereafter, on April 19, 2007, Jones pleaded guilty to the burglary charge pursuant to a plea agreement that he negotiated with the State. In exchange, the State agreed to dismiss the remaining charges.

The trial court accepted the agreement and a sentencing hearing commenced on July 17, 2007. At the hearing, the trial court commented as follows:

The aggravating factors are: that the victim, Martha, was over 65; you have one prior misdemeanor conviction; you battered the randomly selected victim causing bodily injury; you caused significant negative emotional impact on Ms. Cheever including the fact that she had to relocate from her [location] of 41 years; you have no high school diploma or GED and in fact, the evidence is that you just quit school; you did not voluntarily seek any type of substance abuse treatment; you assisted in flooding the jail. I’m not even going to talk about the battery incident[.²] [I]f someone threw urine on me I’d probably hit them too; you have no history of gainful employment; and there is significant evidence that this crime was planned.

On the mitigating side, . . . you did admit your crime saving the State the time and expense of trying you, and certainly saving Ms. Cheever the trauma of having to sit in this courtroom and testify. I recognize that you have one prior misdemeanor, that’s not a significant criminal history. I

² While in jail awaiting sentencing, Jones was disciplined for a battery incident and for participating in the flooding of the prison.

recognize your young age, the crime may be the result of substance abuse and today I think you are sorry. What you were back then I don't know, today you probably are sorry. In weighing those aggravating and mitigating factors Joshua, this is a case which the aggravators far, far outweigh the mitigators. In fact, this crime, Joshua, I've sat up here almost 11 years and this is one of the most heinous and scary crimes I've seen because this little lady was just an elderly randomly selected victim, and there's evidence the crime was planned. In weighing the aggravators and mitigators, the sentence calls out for the aggravated sentence of 20 years. I'm going to suspend 3 of those years because you came in here and admitted the crime and didn't force this lady to come up here and testify.

Tr. p. 42-44. Jones now appeals.

DISCUSSION AND DECISION

Pursuant to Indiana Appellate Rule 7(B), our court has the constitutional authority to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is "inappropriate in light of the nature of the offense and the character of the offender." We defer to the trial court during appropriateness review, Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007), and we refrain from merely substituting our judgment for that of the trial court. The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Jones directs us to our Supreme Court's opinion in Hollin v. State, 877 N.E.2d 462 (Ind. 2007), for the proposition that his "unique characteristics as an offender" make him eligible to receive a reduced sentence. Appellant's Br. p. 3. In light of Hollin, Jones

maintains that he should not have been considered among the worst offenders that warranted such a lengthy sentence.³

In Hollin, the evidence showed that the eighteen-year-old defendant and another young man devised a scheme whereby they would knock on doors until they found an unoccupied house with the intention of breaking in and stealing valuables. Id. at 463. The first house they encountered was occupied and, in order to justify their knocking on the door, they asked the occupant for directions to Greensburg. Id. On their second try, Hollin and his co-defendant found an unoccupied house, broke into it and stole \$600. Hollin was charged with, and convicted of, conspiracy to commit burglary, a class B felony. Hollin was also found to be a habitual offender.

The trial court sentenced Hollin to twenty years for conspiracy, which was enhanced by twenty years on the habitual offender adjudication. In revising Hollin's sentence to a total aggregate term of twenty years, our Supreme Court observed that

No one was home at the time of the burglary and apparently neither Hollin nor [the co-defendant] was armed. These facts together decreased the likelihood of violence. Frye v. State, 837 N.E.2d 1012, 1014 (Ind. 2005). . . . As for Hollin's character, we acknowledge that even at the age of eighteen, Hollin has an extended criminal history. However, most are juvenile offenses. And with the exception of cruelty to an animal—committed as a juvenile—none of his offenses involved crimes of violence.

Id. at 465.

In stark contrast to the circumstances in Hollin, the evidence showed that Jones specifically selected a residence in a rural area that was occupied. Tr. p. 4. When

³ Pursuant to Indiana Code section 35-50-2-5 5, “[a] person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.”

Cheever answered her door, Jones forced his way inside and brutally beat her. Id. at 5. As a result of the attack, Cheever suffered numerous injuries and remained in the hospital for twenty-three days. Appellant's App. p. 47. Moreover, Cheever became so frightened that she moved to St. Louis to be close to her family. Id. at 47, 48.

Although Jones's criminal history is much shorter than Hollin's, his record includes a battery charge and an adjudication for illegal consumption. Those charges amounted to acts of violence and substance abuse—the very factors that contributed to his attack on Cheever. Also, as noted above, Jones was disciplined twice while incarcerated. In sum, we do not find Jones's sentence inappropriate in light of the nature of the offense and his character.

The judgment of the trial court is affirmed.

DARDEN, J., and BRADFORD, J., concur.